

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

I.T.A.Nos. 5, 11, 13, 14, 73 & 77 of 2016

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COMMON JUDGMENT: (*Per VRS,J*)

All these six appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961, question the independent orders passed by the Income Tax Appellate Tribunal refusing to recall its earlier orders in six different appeals, relating to the assessment years 2005-2006, 1995-1996, 1993-1994, 2006-2007, 1994-1995 and 1996-1997 respectively.

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel for the Income Tax Department, and Mr. C.P. Ramaswami, learned standing counsel for the respondent/assessee Bank.

3. As against the orders of the Commissioner of Income Tax (Appeals), dated 12.03.2011, relating to the assessment years 1993-1994, 1996-1997, 1997-1998 and 1995-1996, the Revenue filed appeals in I.T.A.Nos.395 to 397 and 555 of

2001 respectively before the Income Tax Appellate Tribunal. These appeals were dismissed by the Tribunal, on the short ground that the Revenue failed to obtain the approval of the Committee on Disputes, as mandated by the decision of the Supreme Court in ***Oil and Natural Gas Commission Vs. Collector of Central Excise***^[1]. Similarly, two more appeals filed by the Revenue in I.T.A.Nos.1954 of 1996 and 584 of 2008 relating to the assessment years 1993-1994 and 2005-2006, were also dismissed by the Tribunal, by orders dated 11.06.2002 and 19.03.2010 respectively.

4. But, subsequently, a Constitution Bench of the Supreme Court clarified in ***Electronics Corporation of India Limited Vs. Union of India and others***^[2] decided on 17.02.2011 that failure to obtain the approval of the Committee on Disputes, is not a bar for filing an appeal. The imposition of the restriction by the decision of the Supreme Court in ***ONGC-III*** was withdrawn.

5. Thereafter, the Revenue filed miscellaneous applications before the Tribunal for recalling the orders of dismissal passed in their appeals on different dates. All these miscellaneous applications were dismissed by the

Tribunal, on the sole ground that the applications for recalling the earlier orders were filed, after an inordinate delay, especially after four years. Aggrieved by the dismissal of their applications, for recalling the earlier orders, the Revenue has come up with these appeals.

6. The main grievance of the appellant/Revenue is that it was only after the decision of the Supreme Court dated 17.02.2011 that the Revenue became entitled to file applications for recalling of the earlier orders, especially in cases where no approval of the Committee on Disputes was obtained. Hence, it is contended by the learned senior standing counsel that the dismissal of the applications for recalling of the earlier orders, on the ground of inordinate delay, has no legs to stand.

7. We have carefully considered the above submissions.

8. The Tribunal is a creature of the statute. It cannot have any power other than what is conferred by statute. The only power conferred upon the Tribunal to recall its earlier orders, could be traced to Sub-Section (2) of Section 254. Sub-Section (2) of Section 254 enables the Tribunal to make an amendment of an order passed by it under Sub-Section (1), with a view to rectifying any

mistake apparent from the record, provided it is done within four years from the date of the order. The expression “four years from the date of the order” has now been replaced by the words “six months from the end of the month in which the order was passed”, by the Finance Act, 2016 with effect from 01.06.2016.

9. There is no dispute about the fact that the miscellaneous applications filed by the Revenue in all these cases, were filed after four years from the date of the original orders dismissing the appeals of the Revenue. Therefore, the only power, under which the Tribunal could have recalled the orders, even if we assume that the power to recall the orders is inbuilt within Sub-Section (2) of Section 254, is only the same provision and nothing other than that.

10. Even in **ECIL case (2 supra)**, the Supreme Court indicated that as per the decision in **ONGC-III**, the Revenue was entitled to file an appeal, to save the period of limitation. This is a clear indication of the fact that neither the Court nor the Tribunal would have had the power to undo the period of limitation prescribed for the exercise of any power by the Tribunal. By labelling the application as one for recalling its earlier order, the

Department cannot take a devious route to reopen the application.

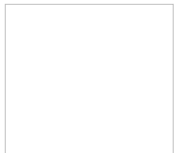
11. It is true that even the Supreme Court could not have divested the Revenue of their statutory right of appeal, but that was a point available for the Revenue to agitate in an appeal filed under Section 260A as against the order of Tribunal. The Revenue cannot seek the annulment or enlargement of the period of limitation prescribed in Section 254(2), by taking this route. Hence, all these appeals are dismissed.

Consequently, miscellaneous petitions if any pending in the appeals shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

18th July, 2016
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[\[1\]](#) 1995 Suppl. (4) SCC 541

[\[2\]](#) 2011 (265) ELT 11 (SC) (Larger Bench)